

State Board of Equalization

OPERATIONS MEMO

For Public Release

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**SUBJECT: USE TAX DUE DATES AND PROCESSING USE TAX REPORTED ON
INCOME TAX RETURNS FILED WITH THE FRANCHISE TAX BOARD**

I. PURPOSE

This operations memo provides guidelines and procedures for the implementation of Revenue and Taxation Code (RTC) section 6452.1 enacted by Senate Bill 1009 (Chapter 718, Statutes of 2003). Section 6452.1 allows a "person" (as defined by RTC section 6005) who purchased tangible personal property from out-of-state sellers, but who did not pay sales or use tax at the time of purchase, to report and pay the use tax on their California income tax return. This section does not apply to persons having seller's permits or who are required to register with the Board of Equalization (Board) for the purpose of reporting sales and use taxes.

Effective September 15, 2004, Senate Bill 1881 (Chapter 527, Statutes of 2004) repealed section 6451.5 that, among other things, extended the due date for use tax reported directly to the Board.

II. BACKGROUND

Previously, persons purchasing tangible personal property from out-of-state vendors reported and paid use tax to the Board using the Individual Use Tax Return (form BOE-401-DS) contained in Publication 79-B, *California Use Tax*. For tax years 2003 through 2009, section 6452.1 affords persons the option of reporting use tax on income tax returns filed with the Franchise Tax Board (FTB).

Section 6452.1 prohibits persons from reporting use tax for certain tangible personal property, specifically:

- Mobilehomes or commercial coaches required to be registered annually pursuant to the Health and Safety Code.
- Vehicles subject to identification under Division 16.5 (commencing with section 38000) of the Vehicle Code (off-highway vehicles).
- Vehicles that qualify under the permanent trailer identification plate program pursuant to subdivision (a) of section 5014.1 of the Vehicle Code.
- Use tax imposed on a vehicle, vessel, or aircraft.
- Use tax imposed on a lessee of tangible personal property.

Persons with consumer use tax accounts shall continue to report and pay use tax by filing use tax returns under their existing accounts (SU) and should not be advised to close their accounts.

III. DUE DATES

The due date of a person's use tax liability depends on whether or not the person has a seller's permit or consumer use tax account and whether the person reports the use tax on their FTB return or directly to the Board. The table below identifies the due date for use tax in various circumstances.

Use Tax Due Dates

	Tax Reported On	Total Amount of Purchases	Due Date	Notes
Persons NOT Required to Hold Seller's Permits or Register for Consumer Use Tax Accounts	FTB Tax Return	Any amount	Due on or before the same date as the person's FTB return (RTC § 6452.1).	Use tax must be reported on the FTB tax return corresponding to the year in which the use tax liability was incurred.
	Individual Use Tax Return (BOE-401-DS)	Any amount	Due on or before the last date of the month that follows the quarter in which the use tax liability was incurred.	For example, a person making purchases subject to use tax during the months of July and August must report and pay the tax to the Board on or before October 31st of the same year.
Persons Required to Hold Seller's Permits or Register for Consumer Use Tax Accounts	Sales and Use Tax or Consumer Use Tax Return	Any amount	Due on or before the due date of the return.	Purchases subject to use tax must be reported on the return for the reporting period in which the purchases were first used in California.

IV. PROCESSING RESPONSIBILITIES

This section describes the responsibilities of FTB and various Board sections and units.

A. Franchise Tax Board

FTB will include basic use tax information in their tax booklets for tax years 2003 through 2009. This information will include a worksheet for calculating a person's use tax liability as well as a sales and use tax rate chart. Since use tax liabilities will be

calculated using a worksheet instead of a schedule, only the amount of use tax due will be reported on income tax returns and captured by FTB.

Each month, FTB will transmit to the Board use tax amounts received during the month. FTB will also provide the Board with files containing information necessary for processing the use tax amounts transferred.

Section 6452.1 authorizes FTB to apply monies remitted for use tax to a person's current or past due FTB liability. In such instances, FTB will mail a notice to the person informing them of amounts remitted for use tax which were instead used to satisfy FTB liabilities. The notice will instruct the person to remit the use tax amount remaining due directly to the Board.

B. Local Revenue Allocation Section

Local Revenue Allocation Section (LRAS) staff is responsible for preparing returns based on the use tax information provided by FTB, allocating the local tax revenue, and inputting the returns and schedules into IRIS.

An arbitrary Board account will only be established in instances where a person has reported an amount of use tax greater than the amount of monies received from FTB and where the amount remaining due exceeds the billing threshold established for these billings. LRAS is responsible for determining whether or not a person has an existing account. If an account is not located, LRAS staff will issue an arbitrary account with a 062 prefix. LRAS will provide the Return Analysis Section (RAS) with all information necessary for creating and issuing new use tax billings as well as adjusting existing billings.

C. Return Analysis Section

RAS staff is responsible for creating and issuing use tax billings to persons with unpaid use tax liabilities using accounts created and/or identified by LRAS and the information provided by FTB. Prior to issuing a billing, RAS staff must verify the person did not already submit payment for the use tax by reviewing the person's account in IRIS. The due dates specified in section III will be used to calculate the applicable penalty and interest amounts.

RAS staff will also be responsible for performing adjustments to use tax amounts previously billed. If the Board receives additional amounts from FTB for a person's use tax liability, the liability will be adjusted using the legal adjustment process in IRIS. A new legal adjustment type, "FTB," has been established in IRIS for this purpose. After performing a legal adjustment, a notice explaining the adjustment should be created and mailed to the person.

D. Cashier Unit

It is anticipated the addition of the use tax line on California's income tax returns will result in an increased awareness of reporting and paying use tax. Since a person may choose to report use tax directly to the Board instead of on an income tax return, the Board may receive a greater number of use tax returns than in past years. Such returns will be processed using existing return processing procedures.

As stated in section IV. A., FTB will send notices to persons instructing them to remit payment to the Board for use taxes remaining due in instances where amounts intended for payment of use tax were instead applied to their liability with FTB. These notices will instruct the person to remit the use tax remaining due to the Board, along with a photocopy of the FTB notice. When processing these payments, Cashier Unit staff will perform a search in IRIS to determine if an arbitrary account for the person already exists. If an account cannot be located, an arbitrary account will be established using the 062 prefix. The "S8F" batch code will be used for processing these payments.

E. District Offices / Centralized Collection Section

District office compliance staff and Centralized Collection Section staff are responsible for collection of use tax liabilities billed by RAS. As with other sales and use tax accounts, arbitrary accounts with use tax liabilities requiring action by compliance staff will enter the Board's Automated Compliance Management System (ACMS) and will be assigned based upon the account's district of control. Existing account routing criteria in ACMS will be utilized to determine the specific compliance staff member who is responsible for collection of a particular account.

Although FTB notices will direct persons to mail use tax payments to the Board's Headquarters building for processing, Board field offices may receive these payments instead. When this occurs, district office staff must perform a search in IRIS to determine if an arbitrary account already exists for the person or if a billing for the use tax was already issued. If an account is located, the payment will be applied to the existing account in IRIS.

If an account cannot be located, district staff will issue a 062 prefix arbitrary account and process the payment as a voluntary use tax payment using existing procedures. A one-time (OTM) financial obligation must be created in IRIS so the Cashier Unit can process the payment.

F. Research Team

The Research Team (Compliance and Technology Section) will be responsible for maintaining a database of persons reporting use tax on their income tax returns. Information necessary for compiling this information will be provided to the Research Team by LRAS staff. This database will be utilized by the Research Team for creating ad-hoc reports for management and for verifying use tax reported and paid by a specific person.

V. CORRECTING USE TAX AMOUNTS

If a person determines they owe more use tax than they originally reported on their income tax return, they must file the Individual Use Tax Return (form BOE-401-DS) found in Publication 79-B, *California Use Tax*. Only the additional use tax due should be reported on the return. In rare instances, for example as the result of a key data error, the amount of use tax reported by a person on their income tax return may not be captured by FTB. Such persons should report the use tax to the Board using the Individual Use Tax Return.

If a person determines they paid more use tax than they actually owed, the method of resolution depends on whether or not the use tax paid by the person has already been transferred by FTB to the Board. This can be determined by requesting the Research Team to query the database they maintain. If the person's use tax payment is not found in the database, the Board has not received the person's use tax payment from FTB and they must, therefore, contact FTB for assistance.

If the person's use tax payment is found in the database, they must request a refund of overpayment from the Board. Form BOE-101, *Claim for Refund or Credit*, can be used for this purpose. The claim must state the use tax was originally reported/paid on an income tax return and provide the tax year of the income tax return. This information will assist the Board in verifying the person's claim. Claims for refunds involving use tax paid with an income tax return must be filed in accordance with existing statutes contained in Chapter 7 of the Revenue and Taxation Code. The Audit Determination and Refund Section (ADRS) will process these claims using existing policies and procedures.

VI. VERIFYING USE TAX REPORTED

Several Board functions (e.g., audits, claims for refunds, use tax leads) may require the verification of use tax reported and paid by a person on their income tax return. This information can be verified by requesting the Research Team to query the database they maintain. The Board will establish arbitrary accounts in IRIS in instances where a person either did not pay in full the use tax amount reported on their income tax return or paid more use tax on their return than was actually due and subsequently requested a refund of the overpayment. Therefore, along with information obtained from the Research Team, IRIS must also be queried to determine if additional information about a person's use tax payment exists.

VII. REPORTING TIME EXPENDITURES

Staff time expenditures related to the processing of use tax received from FTB should be reported using time code 3230. Such expenditures include time necessary for allocating use tax amounts received, establishing arbitrary accounts, creating billings, adjusting billings previously issued, collecting unpaid use tax amounts, and processing refunds. Additionally, this time code should also be used for time spent querying the database of persons reporting use tax, creating ad-hoc reports, and reviewing use tax information contained in FTB's tax booklets.

VIII. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

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